## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

JIN MING LIN, CHI WAI CHAO, YOOK THAI CHEAH, MING F. FUNG, MUOI GIANG, YUEN YUE SOOHOO, and MEI ZHI,	) ) ) )
Plaintiffs, v.	) Civil Action No. 09-11510-GAO
CHINATOWN RESTAURANT CORP., and JOYCE P.Y. HAYES,	) ) )
Defendants.	) ) _)

# <u>PLAINTIFFS' MOTION IN LIMINE</u> TO PRECLUDE USE OF SO-CALLED "CONTRACTS"

Plaintiffs move this Honorable Court to preclude Defendants from introducing the so-called "contracts" in this case. Defendant Hayes testified at her deposition that, after this lawsuit was filed, she started using a document she referred to as a "contract" whereby an employee would have to sign this document acknowledging the stated number of hours worked in order to receive a paycheck. Any mention of these "contracts" will likely confuse the jury about whether an employee can waive his or her rights under the FLSA by agreeing to terms in the "contract."

Further, the issue will be unduly prejudicial in that a jury may incorrectly take the position that a plaintiff who has "bargained for" and agreed to a "contract" cannot then later bring suit to collect unpaid wages. But "FLSA rights cannot be abridged by contract or otherwise waived because it would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate." *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 740 (1981) (citing cases).

Finally, any attempt to introduce evidence that Defendants implemented the use of these "contracts" pursuant to advice of their attorneys should not be allowed.

For all of the above reasons, the Court should exclude any reference to the so-called "contracts" as it would be irrelevant and unduly prejudicial under F.R.E. 402-403.

#### RESPECTFULLY SUBMITTED,

### **For Plaintiffs**

By their attorneys,

/s/ Myong J. Joun

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Dated: October 19, 2012

#### **CERTIFICATE OF SERVICE**

I certify that on this day I caused a true copy of the above document to be served upon the attorney of record for all parties via CM/ECF.

Date: <u>10/19/2012</u> /s/Myong J. Joun Myong J. Joun